

INTELLECTUAL PROPERTY IN THE DIGITAL ERA (450H1S)

2000/01

VOLUME 2: COPYRIGHT (cont.)

Andrew Christie
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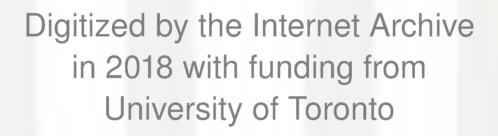
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HEADLINE: In Focus;

U.S. Film Studios, TV Stations Win Preliminary Injunction Against iCraveTV

BODY:

Ten major motion picture studios and three broadcasting companies filed suit Jan. 20 against iCraveTV--which relays television programs and movies to the United States from cyberspace--for copyright and trademark infringement, dilution, unfair competition, and civil conspiracy and were granted a temporary restraining order Jan. 28 and a preliminary injunction Feb. 8 (Twentieth Century Fox Film Corp. v. iCraveTV, W.D. Pa., No. 00121, 2/8/00).

The Toronto-based site had been picking up over-the-air network TV broadcasts and putting them live on the Internet. The TRO prevented iCraveTV's live Internet broadcast of the Super Bowl on Jan. 30--iCraveTV visitors were greeted with the message, "Access to stations and listings is not available at this time." On Jan. 31, the Canadian Association of Broad-casters filed a similar suit against iCrave TV in an Ontario court.

But some said that, even with the temporary shutdown of iCraveTV's operation, its concept could herald changes in the dynamics of IP rights in cyberspace.

U.S. District Judge Donald Ziegler's order enjoined iCraveTV and its codefendants from: (1) transmitting plaintiffs' copyrighted programs over the Internet into this country and (2) making any false representations about sponsorship or authorization of iCraveTV by the studios or TV networks.

According to the plaintiffs, iCraveTV and co-defendants TVRadio Now Corp., president and CEO William R. Craig, William R. Craig Consulting and George Simons, are guilty of "one of the largest and most brazen thefts of intellectual property ever committed in the United States." Since Nov. 30 of last year, the plaintiffs claimed, the defendants have pulled the broadcasts of 17 television stations in Buffalo, N.Y., and Toronto, Ontario, off the air, digitized them, and sent them out over the Internet.

"Defendants are using plaintiffs' programming to attract visitors to the iCraveTV.com site, so that defendants can promote themselves and unlawfully sell advertising to third parties in competition with the sale of advertising by the Network Plaintiffs and by other entities who lawfully televise plaintiffs' programming," the plaintiffs charged. "Without plaintiffs' valuable programming, the iCraveTV.com site would be of no interest to the public (and hence of no value to advertisers)."

"Judge Ziegler's ruling reaffirms that this is a simple case about theft," Motion Picture Association of America President and Chief Executive Officer Jack Valenti said in a Jan. 31 press release concerning the TRO. "This is a first-step victory for creative artists, consumers, and copyright owners everywhere."

After announcement of the Feb. 8 ruling, Craig said in a statement that he will try and implement technology that would keep the broadcast inside Canada. However, as noted, Canadian broadcasters have also filed suit.

There have reportedly been settlement talks, although the U.S. broadcasters at least appear unlikely to settle. Judge Ziegler said he would revaluate the issue in 90 days.

For Dan Boehnen, a partner in the Chicago, Ill., firm of McDonnell Boehnen Hulbert & Burghoff, the issue is not so clear-cut.

The lawsuit is in "the early stages of trying to iron out yet another new aspect of how the Internet is going to affect people and the legal system," Boehnen said. "iCraveTV doesn't fit neatly into existing [IP] cubbyholes."

Craig's operation may have fatal flaws, Boehnen said, among them the alteration of the content of plaintiffs' programming by adding advertisements, and his failure to boost security controls once he became aware that the screening mechanism for keeping iCraveTV from U.S. viewers was not effective. (According to the plaintiffs, Craig's screening mechanism is nothing more than a "sham pretense of avoiding public performance in the United States.")

Still, Craig's concept is "very creative and innovative," according to Boehnen. "By the time the dust settles," he added, "Craig's operation will be substantially changed—and possibly no longer in business—but he may be a pioneer. He just may need to respect IP owners' rights more."

"In a limited sense, there's some truth" to that, American University law school Professor Peter Jaszi said Jan. 24, "because it is clear that the Copyright Act will have to come to terms with Internet retransmission of television signals." The decision will be made either legislatively, he said, or "a choice will have to be made that for this technology, we will have to put it on an effective equivalent with cable, and let them fight it out in the marketplace."

But iCraveTV's business model "is not the way to go," Jaszi said. Any resolution of the problems in Internet retransmissions "should look more like the cable [retransmission] model."

"There doesn't seem to be any way in which this activity is protected by exemptions under the Copyright Act," Jaszi said. "[iCraveTV has] stepped out of the zone."

"I wouldn't call [Craig] a pioneer," said Duke University Law School Professor David Lange. But the Internet "invites uses that are at odds with" copyright law. And this case "brings the nature of the Internet and its susceptibility to practices of this kind into sharper relief."

The lawsuit is also interesting, Lange said, because of the interplay between American and Canadian IP law.

⁻⁻ Dugie Standeford and John T. Aquino



